

R E M A R K S

Claims 1 to 6 as set forth in Appendix I of this paper are now pending in this case. Claims 4 and 5 have been amended as indicated in the listing of the claims.

More specifically, applicants have amended Claims 4 and 5 to allow for the option that a compound (I) in which Q denotes $N(-OCH_3)-COOCH_3$ is used in the claimed embodiment. The embodiment is, inter alia, supported by Claim 1 and the amendment therefore does not introduce new matter.

The Examiner required election of, and restriction of the application to, a single invention which the Examiner considers to be a method of using a single compound.²⁾ Applicants herewith elect the method for increasing the resistance of plants wherein the compound of formula (I) is Example No. II-5.³⁾ Claims 1 to 6 read on the respective method.

It is, however, respectfully submitted that the Examiner's restriction requirement is deemed to be in error, and traversal is respectfully solicited.

The Examiner argued that the method of using compounds of formula (II) on plants was known, as evidenced by the teaching of *Ziegler et al.* (WO 95/18789). It should, however, be appreciated that *Ziegler et al.* merely describe methods in which the respective compounds are employed as microbicides, insecticides and acaricides in agriculture, horticulture and in the hygiene sector.⁴⁾ Applicants' invention pertains, in contrast thereto, to a "method for increasing the resistance of plants to the phytotoxicity of other crop protection products" in which effective amounts of a certain compound are applied to the plants, the soil or to seeds, and the compound is taken up by the plants or the seeds. It is well established that the pertinent elements of a method claim are not limited to the materials which are used and the nature of the specific process which is employed but also include the the particular result which is obtained by the claimed method.⁵⁾ The particular result which is achieved in accor-

2) Office action page 2, lines 6 to 8.

3) Cf. Table II on page 8 of the application; cf. also Use Example 2, page 22, indicated line 27, to page 24, indicated line 38, of the application.

4) Cf., e.g., Abstract of WO 95/18789.

5) *In re Dillon*, 919 F.2d 688, 695, 16 USPQ2d 1897, 1903 (Fed. Cir. 1990) (*en banc*), cert. denied, 500 U.S. 904 (1991).

dance with applicants' method, therefore, clearly qualifies as a special technical feature which is involved in the technical relationship between methods in accordance with applicants' claims which employ different compounds (I).⁶⁾ As such, applicants' claims meet the circumstances set forth in PCT Rule 13.2 in which the requirement of unity of invention is to be considered fulfilled. As evidenced by applicants' Experiments⁷⁾ Example compound No. I-16⁸⁾ and Example compound II-5²⁾ are effective in the manner specified in applicants' claims. The Examiner's position that the *"compounds vary distinctly in their structures and functions"*⁹⁾ is therefore clearly in error. Although the structures of the compounds may vary applicants' data clearly corroborate that the compounds nonetheless function in the same manner. The Examiner also argued that *"each compound is assumed to be a patentably distinct invention, in the absence of evidence to the contrary."*¹⁰⁾ On the one hand, it should be noted that unity of invention rather than patentable distinctness is the standard governing a restriction of the application. On the other hand, applicants' claims are not drawn to the compounds but are drawn to a method.

Furthermore, it is respectfully submitted that the principles of unity of invention which are set forth in PCT Rule 13 specifically allow that an international application relate to *"a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention")."*¹¹⁾ Also, PCT Article 27(1) sets forth: *"No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and its Regulations."* The Examiner's requirement to restrict the application to a single invention is deemed to be inconsistent with the provisions of PCT Article 27.

The Examiner's restriction requirement is, at least for the reasons set forth in the foregoing, deemed to be in error. Favorable reconsideration of the Examiner's position and traversal of the requirement is therefore respectfully solicited.

6) Cf. PCT Rule 13.2.

7) Cf. page 21, indicated line 29, to page 24, indicated line 38, of the application.

8) Cf. Table 1 on page 7 of the application.

9) Office action page 2, line 12.

10) Office action page 2, lines 18 and 19.

11) Cf. PCT Rule 13.1.